



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

Willow Beach Plaza, LLC  
617 Rutland Street  
Carlisle, Massachusetts 01741

Re: Fast Track Convenience  
136 South Willow, Manchester, NH

NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
No. AF 03-024

September 8, 2003

### I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division ("the Division") to Willow Beach Plaza, LLC, pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$1,300 be imposed against Willow Beach Plaza, LLC for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

### II. PARTIES

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having in its principal office at 6 Hazen Drive, Concord, NH.
2. Willow Beach Plaza, LLC, Inc. is a corporation having a mailing address of 617 Rutland Street, Carlisle, Massachusetts.

### III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIM

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et. seq.*
2. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of any rule adopted pursuant to RSA 125-C.
3. Env-A 1205.19 and 1205.20 require gasoline-dispensing facilities in Hillsborough, Merrimack, Rockingham and Strafford counties that meet certain throughput criteria to install a California Air Resources Board ("CARB") certified Stage II vapor recovery system.

4. Willow Beach Plaza, LLC, ("Willow Beach") is the owner of Fast Track Convenience, a gasoline facility located at 136 South Willow, Manchester, Hillsborough County, NH, 03103 ("the Facility"). The Facility meets the throughput requirements specified in Env-A 1205.19.
5. Env-A 1205.27 states that a Stage II certificate of compliance shall be valid for no more than three years.
6. Env-A 1205.24(a)(2) requires the owner or operator of an applicable gasoline dispensing facility to re-test a Stage II system within 90 days prior to the expiration date of any certification of compliance issued by the Division to the owner.
7. Env-A 1205.28 requires the owner or operator of an applicable gasoline dispensing facility to pay a non-refundable renewal fee of \$200 to the Division on or before the expiration date of the certificate of compliance.
8. Env-A 1205.23 requires the owner or operator of an applicable gasoline dispensing facility to notify the Division in writing at least 5 working days prior to any proposed testing of the date and time such testing will occur, and the name of the person who is responsible for such testing.
9. The Facility's Certificate expired on November 1, 2000.
10. To date, the Facility has not conducted the required Stage II vapor recovery re-test.

#### **IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES**

1. Willow Beach has violated Env-A 1205.24(a)(2) by failing to re-test the Stage II vapor recovery system within 90 days prior to the expiration date of the Certificate. The Division has determined that Violation 1 is a major deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of between \$1,251 and \$1,750. The Division is seeking a fine of \$1,300 for this violation.

**The total fine being sought is \$1,300.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than October 8, 2003, using the enclosed colored form.**

1. If Willow Beach would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If Willow Beach chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If Willow Beach wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Willow Beach interest in settling. Willow Beach is not required to be represented by an attorney. If Willow Beach chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

## **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Willow Beach committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the things sought to be proved is true.

If the Division proves that Willow Beach committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

❖ Pursuant to Env-C 601.09, the fine will be **reduced by 10%** for each of the circumstances listed below **that Willow Beach proves, by a preponderance of the evidence, applies** in this case:

1. The violation was a one-time or non-continuing violation, **and** Willow Beach did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Willow Beach did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Willow Beach was making a good faith effort to comply with the requirement that was violated.
3. Willow Beach has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Willow Beach's case, which was not known to the Division at the time the fine was proposed.

### **\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Willow Beach committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Willow Beach's opportunity to present testimony to present testimony and evidence that Willow Beach did not commit the**

**violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Willow Beach has any evidence, such as photographs, business records or other documents, that Willow Beach believes show that Willow Beach did not commit the violation(s) or that otherwise supports Willow Beach position, Willow Beach should bring the evidence to the hearing. Willow Beach may also bring witnesses (other people) to the hearing to testify on Willow Beach's behalf.

**If Willow Beach wishes to have an informal meeting to discuss the issues, Willow Beach must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If Willow Beach has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.

**COPY**  
Philip J. O'Brien, Ph.D., Director  
Waste Management Division

Enclosure

cc: Gretchen Rule, DES Legal Unit  
Susan Alexant, DES Hearings and Rules Attorney  
T. Beaulieu, DES  
R. Kurowski, US EPA  
City of Manchester

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**WILLOW BEACH PLAZA, LLC**  
**IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN October 8, 2003**

Please check the appropriate line and fill in the requested information below.

**APPEARANCE** On behalf of.

\_\_\_\_\_ I request to have a **formal hearing** scheduled in this matter.

\_\_\_\_\_ I request to have a **prehearing conference** scheduled in this matter.

\_\_\_\_\_ I would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Willow Beach Plaza, LLC.

\_\_\_\_\_ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$1,300. paid to "Treasurer, State of New Hampshire" is enclosed.\*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Michael Sclafani, Legal Assistant**

**Department of Environmental Services ~ Legal Unit**

**6 Hazen Drive, P.O. Box 95**

**Concord, NH 03302-0095**

\* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.